HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 966 of 2006

Dinesh Lal s/o Sri Budhi Lal
R/o village Mokh Malla, Patwari Circle Mokh,
Tehsil Chamoli, District Chamoli

..Applicant

Versus

1. State of Uttaranchal.
2. Km. Preeti @ Kirtha d/o Sri Barbal Lal
   R/o village Mokh Malla, Patwari Circle Mokh
   Tehsil Chamoli, District Chamoli

.....Respondents

Dated: 30.11.06

Hon'ble Rajesh Tandon, J.

Heard Sri R.P. Nautiyal counsel for the applicant and learned A.G.A. for the respondents.

By the present application under section 482 Cr.P.C. the applicant has prayed for quashing of the proceedings of Criminal Case No. 986 of 2005, Km. Preeti @ Kirtha vs. Dinesh Lal under section 376 I.P.C. pending in the Court of Chief Judicial Magistrate Chamoli.

Briefly stated respondent no. 2 Km. Preeti has filed a complaint against the applicants in the Court of Chief Judicial Magistrate, Chamoli. According to the complainant accused committed rape on her in the night of 8.3.2005. The complaint was filed on 13.7.2005. Prior to that an application was submitted by the prosecutrix to the village Pradhan on 15.5.2005 stating to the following effect:

अस्तु महोदय से प्रार्थना है कि मैं आज दिनांक 15.5.2005 को अपना घर छोडकर दिनेश लाल पुत्र बुद्धिलाल के घर जा रही हूँ। अतः मुझे उक्त व्यक्ति के परिवार वालों से खतरा बना हुआ है। मैं उक्त व्यक्ति के घर इसलिए जा रही हूँ कि मुझे डर है कि अगर मंगसीर में महिने तक दिनेश लाल के घर वाले हमारी शादी नहीं करवात है तो मैं कहां जाउगी अतः महोदय से अर्ज है कि मेरी जान खतरे में है अगर मेरी जान को कुछ भी हो गया तो जबाबदार बुद्धिलाल का परिवार रहेगा । इस आशय का प्रार्थना पत्र में प्रधान को दे रही हॅ एवं इसकी ए प्रति मेरी पास सुरिक्षित है

Counsel for the applicant has submitted that neither there is any F.I.R. nor the prosecutrix was medically examined. She has also not mentioned the alleged incident of rape in her application given to the village Pradhan.

The applicant has also preferred a revision before the Session Judge, which was dismissed on 1.9.2005.

So far as the instant petition under section 482 Cr.P.C. is concerned no interference can be made under section 482 Cr.P.C. as both the parties will be at liberty to lead the evidence in view of the observations made by the Apex Court in the case Medchl Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd. and others (2003) 3 SCC 269.

In view of the averments that the parties were agreeable for marriage, no useful purpose shall be serve to confine the applicant in jail, therefore, without expressing any opinion on the merits of the case, I direct the applicant to appear before the Magistrate concerned and the court will permit him to file appearance bond to the satisfaction of the Magistrate concerned for his regular appearance in the case.

Subject to the observations made above, application under Section 482 Cr.P.C. is disposed of.

Rajesh Tandon, J.

Dated: 30.11.2006